

Serial No. 09/399,630

Docket No.: KCC-12,681

REMARKS/ARGUMENTS

This application has been reconsidered carefully in light of the Office Action dated as mailed on 09 December 2003. A careful reconsideration of the application by the Examiner in light of the foregoing amendments and the following remarks is respectfully requested.

5 This response is timely filed as it is filed within the three (3) month shortened statutory period for response to the outstanding Office Action.

No additional claim fee is believed due as a result of this Amendment because neither the total number of pending claims nor the number of pending independent claims is believed to exceed the total number and the number
10 of independent claims, respectively, for which fees have previously been paid. If, however, it is determined that such a fee is properly due as a result of this communication, the Commissioner is hereby authorized to charge payment of such fees or credit any overpayment, associated with this communication, to Deposit Account 19-3550.

Amendment to the Specification

In response to the Action, a new paragraph paralleling current independent claim 60 has been added to the Summary of the Invention section such as to ensure that such Summary section is commensurate with the claims as
20 now filed.

Amendment to the Claims

By the above,

1. Claims 60, 71, 75, 78, 80, 83 and 85 have been rewritten to
25 improve their form and to make more clear the invention which Applicants regard as their invention and

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2. Claims 86-88 have been added to more fully and completely claim the disclosed subject matter.

More particularly, claims 60, 71, 75, 78, 80, 83 and 85 have each been rewritten in the manner suggested by the Examiner. In addition, independent claims 60 and 75 have each been rewritten for improved clarity as to the stretchable waist band and the placement of the fasteners.

Newly added claims 86-88 each require that the at least one thrust portion comprises a rigid member and find support throughout the originally filed specification such as at page 18, lines 3-6 and 16-19 and page 25, lines 3-7, for example.

Claims 60-88 remain in the application.

Claim Objections

The informality objections to claims 60-85 have been addressed by rewriting claims 60, 71, 75, 78, 80, 83 and 85 in the manner kindly suggested by the Examiner.

Claims 62, 65 and 74, however, have not been amended. The specification, such as at page 5, lines 13-16, for example, specifically states:

The gasketing assembly is operatively joined with the first portion of the rear waist section to mechanically deploy, upon tensioning of the stretchable material, a gasket element configured to inhibit a longitudinal flow of human discharge along a bodyfacing surface of the absorbent article.

Moreover, claims 62, 65 and 74 respectively refer to a gasketing assembly comprising "at least one thrust portion", "at least a pair of opposed thrust portions", and "a pair of leg members". The specification, such as page 22, lines 10-11, for example, specifically states:

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The gasketing assembly 250 is generally composed of first and second leg members 252 and 254, respectively.

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Thus, claims 62, 65 and 74 have not been rewritten.

Claim Rejections - 35 U.S.C. §102(e)

Claims 60-85 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,248,098 to Sayama (hereinafter "Sayama").

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Each of independent claims 60, 75 and 80 require an absorbent article with a stretchable waist band, that the stretchable waist band have a pair of opposite or opposed ends and that each opposite or opposed end carry a fastener employable to secure the absorbent article about the waist of the wearer with the stretchable waist band under tension

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It is respectfully submitted that such an invention is neither shown nor suggested by the cited prior art. While Sayama discloses that the diaper thereof includes tape fasteners 24, Sayama specifically teaches that the tape fasteners extend laterally from the respective side edges 13 of the main body 1. While FIG. 1 of Sayama shows the placement of the tape fasteners 24 in the rear waist region 17, FIG. 1 clearly shows that the tape fasteners 24 displaced relative to the rear waist elastic member 22 and thus the fasteners of Sayama are clearly not carried by opposite or opposed ends of a stretchable waist band, as required in the claimed invention.

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In view thereof, claims 60, 75 and 80 are each believed to be patentable over the prior art of record and notification to that effect is solicited. Further, as claims 61-74, 76-9 and 81-85, are dependent on claims 60, 75 and 80,

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respectively, these claims are also believed to be patentable over the prior art of record and notification to that effect is also solicited.

Further, while the Action asserts the position that Sayama "teaches the function, capabilities, methodology or properties set forth in the claims, i.e. as the ends of the gasket element(s) are tensioned by application to the wearer, i.e. the ends become less gathered, the base portions are spread deploying the face portion(s) of the gasket element(s)", such assertion is not believed to be supported by the disclosure appearing in Sayama. In particular, Sayama specifically states:

FIG. 4 is a view similar to FIG. 2 but illustrating the diaper put on the wearer's body (not illustrated). As the diaper is put on the wearer's body, the diaper is curved with the topsheet 6 lying inside, not only as viewed longitudinally but also as viewed transversely of the diaper. With the diaper curved in this manner, the elastic members 43 associated with the crotch region 18 contract and cause the free remainders, if any, of the respective lower portions 37 as well as the respective upper portions 38 to rise up on the inner surface, i.e., the topsheet 6 of the main body 1. Consequently, the top wall 30 is spaced apart upward from the inner surface of the main body 1. In this way, the cavity 5 defined by the main body 1 and the supplemental member 2 so as to receive both feces and urine has its inner volume enlarged to the maximum. Thereupon, the top wall 30 including the portions of the side walls 41 extending in the proximity of their distal edges 41A are tightly placed against the wearer's crotch region. (See Sayama, column 3, line 56 through column 4, line 6, emphasis added.)

Clearly, Sayama is relying on elastic members 43 which extend longitudinally of the diaper structure thereof rather than any waist elastic for the effective operation of the structure thereof.

Moreover, in the above-quoted passage Sayama expressly states that it is the curving of the diaper that causes the top wall 30 to be spaced apart upward from the inner surface of the main body 1 of the diaper thereof. This is in sharp

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contrast to the claimed invention wherein tensioning of the stretchable waist band produces or results in a mechanical deployment of the at least one gasket element.

Still further, in the above-quoted passage Sayama expressly relies on a contraction of the elastic members 43 for the effective operation of the structure thereof. This too is in sharp contrast to the claimed invention which requires tensioning of the stretchable waist band to mechanically deploy the at least one gasket element thereof.

Thus, at least for the reasons stated above, claims 60-85 are believed to be patentable over the prior art of record and notification to that effect is solicited.

Newly Added Claims

Claims 86-88 have been added.

Claims 86-88 each require that the at least one thrust portion comprises a rigid member. Articles having such structure and methods employing such articles are not shown or suggested by the cited art.

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Conclusion

In view of the above, all pending claims are believed to be in condition for allowance and notification to that effect is solicited. However, should the Examiner detect any remaining issue or have any question, the Examiner is kindly requested to contact the undersigned, preferably by telephone, in an effort to expedite examination of the application.

Respectfully submitted,



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